

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AVAYA INC.,

Plaintiff,

v.

RAYMOND BRADLEY PEARCE, *et al.*,

Defendants.

Case No. [19-cv-00565-SI](#)

ORDER RE: DISCOVERY

Re: Dkt. No. 258

Plaintiff Avaya Inc. and defendant Atlas Systems, Inc. have submitted a joint discovery letter to the Court. Dkt. No. 258. Atlas seeks a protective order prohibiting Avaya from contacting or issuing subpoenas to Atlas' customers. *Id.* at 2. According to the letter brief, Avaya wishes to contact Atlas' customers and issue subpoenas to up to 20 customers, with leave to seek more discovery from customers if necessary. *Id.* at 6. Atlas asserts that "Avaya fails to provide the subpoena or the specific information it seeks from customers, let alone explain what material information customers have that Avaya cannot seek from a less burdensome source," including through depositions of the defendants. *Id.* at 2. Avaya contends that customers have information relevant to Avaya's claims as well as Atlas' affirmative defenses, including information about what representations Atlas made about the Avaya licenses and telephones that it sold. *Id.* at 5-6.

The Court is mindful of the concerns that Atlas has raised regarding its customers. In addition, "[t]he Ninth Circuit has long held that nonparties subject to discovery requests deserve extra protection from the courts." *United States v. CBS, Inc.*, 666 F.2d 364, 371-72 (9th Cir. 1982). "Courts are particularly reluctant to require a non-party to provide discovery that can be produced by a party." *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014). On this record, Avaya has not demonstrated why it needs to seek information from the customers prior to conducting any depositions of the defendants or seeking the information from other sources. Accordingly, at this time the Court DENIES Avaya's request to contact and

subpoena Atlas' customers. However, after Avaya has conducted more discovery from the parties, Avaya may seek leave of Court to contact and seek discovery from Atlas' customers upon a showing that the information is not otherwise available.

IT IS SO ORDERED.

Dated: March 24, 2021



SUSAN ILLSTON
United States District Judge